

ORIGINAL

LAW OFFICES OF
BOOTH, FRERET & IMLAY

SUITE 204
1233 20TH STREET, N.W.
WASHINGTON, D.C. 20036

ROBERT M. BOOTH, JR. (1911-1981)
JULIAN P. FRERET
CHRISTOPHER D. IMLAY

ORIGINAL
FILE

TELEPHONE
(202) 296-9100
TELECOPIER
(202) 293-1319

October 28, 1992

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Michael C. Ruger, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N. W., Room 8318
Washington, D. C. 20554

Re: MM Docket No. 92-49, RM-7924

Dear Mr. Ruger:

In looking over the Notice of Proposed Rule Making and Order to Show Cause in the captioned proceeding released March 17, 1992, I note that the communities concerned are "Greenfield, Huntsville and Seligman, Missouri" and that Station KFAY-FM is listed throughout as "Channel 225A, Huntsville, Missouri".

According to our files, and as well Commission files, KFAY-FM is licensed to Huntsville, Arkansas.

Inasmuch as almost seven months has elapsed since release of the said NPRM, it is anticipated that a Report and Order should be forthcoming shortly. We trust that any mis-identification of the KFAY-FM city of license should not hold this matter up further.

Yours truly,



Julian P. Freret

JPF:mf

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 92-49

In the Matter of

Amendment of Section 73.202(b). RM-7924
Table of Allotments,
FM Broadcast Stations.
(Greenfield, Huntsville and
Seligman, Missouri)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: March 6, 1992;

Released: March 17, 1992

Comment Date: May 8, 1992

Reply Comment Date: May 26, 1992

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by KJEM FM, A Limited Partnership ("petitioner") requesting the substitution of Channel 227C1 for Channel 227C2 at Seligman, Missouri.¹ Petitioner also requests modification of its license for Station KESE, Channel 227C2, to specify operation on the higher class channel. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Seligman and the surrounding area with expanded service. Petitioner notes that Channel 227C1 can be allotted to Seligman, Missouri, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 299A is substituted for Channel 228A, Greenfield, Missouri, and Channel 258A is substituted for Channel 225A, Huntsville, Missouri.²

3. Station KXBR operates on Channel 228A, Greenfield, Missouri, and Station KFAY-FM operates on Channel 225A, Huntsville, Missouri. The proposed substitution at Greenfield and Huntsville can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the current licensed sites for station KXBR and KFAY-FM.³ We shall also

propose to modify the license for Station KESE, Channel 227C2, to specify operation on Channel 227C1 in accordance with Section 1.420(g) of the Commission's Rules without entertaining competing expressions of interest in the use of Channel 227C1 at Seligman, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

4. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it will reimburse the affected station for costs incurred in changing frequencies. Petitioner has acknowledged its responsibility to reimburse Station KXBR, Greenfield, and Station KFAY-FM, Huntsville, for the reasonable costs in changing frequency.

5. We believe the public interest would be served by proposing the allocation of Channel 227C1 to Seligman, Missouri, since it could provide the community with expanded FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's rules, for the communities listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Greenfield, Missouri	228A	299A
Huntsville, Missouri	225A	258A
Seligman, Missouri	227C2	227C1

6. IT IS ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, KXBR, Inc., the licensee of Station KXBR, Greenfield, Missouri, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 299A in lieu of Channel 228A and Demaree Media, Inc., the licensee of Station KFAY-FM, Huntsville, Missouri, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 258A in lieu of Channel 225A.

7. Pursuant to Section 1.87 of the Commission's Rules, KXBR, Inc., and/or Demaree Media, Inc., may not later than May 8, 1992, file a written statement showing with particularity why their respective authorizations should not be modified as proposed in the *Order to Show Cause*. The Commission may call on KXBR, Inc., and/or Demaree Media, Inc., to furnish additional information. If KXBR, Inc., and/or Demaree Media, Inc., raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, KXBR, Inc., and/or

¹ Although petitioner's request indicates that the original copy of its proposal was signed, it failed to include an affidavit verifying that the statements contained in its petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.402(b) of the Commission's Rules concern-

ing rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. Petitioner is requested to rectify this omission in its comments.

² The coordinates for Channel 227C1, Seligman, are 36-28-03 and 94-10-25.

³ The coordinates for Channel 299A, Greenfield, are 37-23-10 and 93-53-16. The coordinates for Channel 258A, Huntsville, are 36-05-35 and 93-36-16.

Demaree Media, Inc., will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the following:

KXBR, Inc.
Station KXBR
19 East 200 South
Salt Lake City,
Utah 84111

Demaree Media, Inc.
Station KFAY-FM
P.O. Box 878
Fayetteville,
Arkansas 72712

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before May 8, 1992, and reply comments on or before May 26, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Elvis Moody
KJEM FM, A Limited
Partnership
216 North Main Street
Bentonville, Arkansas 72712

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been

served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments.

reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.